

¹ 5 U.S.C. §§ 8101-8193.

diagnosed with psoriasis on both palms, a condition OWCP has not accepted as employment related.²

Dr. Vikas J. Patel, a Board-certified dermatologist and OWCP-referral physician, examined appellant on July 7, 2009. At the time, there was minimal scaling on appellant's hands. Dr. Patel indicated that the condition could possibly be psoriasis or eczema. He noted that the condition appeared to be mostly resolved other than the mild scaling. Because appellant's condition had essentially resolved, Dr. Patel was not inclined to recommend further testing to determine the exact etiology. He further explained that both psoriasis and hand dermatitis can be cyclical, and psoriasis, in particular, improves throughout the summer months. Dr. Patel surmised that appellant most likely had psoriasis, a chronic condition which ebbs and flows. While appellant's psoriasis was not caused by her occupation, Dr. Patel recognized the possibility of an employment-related aggravation of this condition.

On June 10, 2010 appellant filed a claim for a schedule award (Form CA-7).

On July 16, 2010 OWCP advised appellant to obtain an impairment rating from her physician in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2008). When appellant did not respond, OWCP referred the case record to its district medical adviser (DMA) to determine if appellant had permanent impairment of the hands due to her accepted condition of contact dermatitis.

In a September 30, 2010 report, the DMA relied on Dr. Patel's July 7, 2009 examination findings and concluded that appellant had no impairment of the hands.

In December 2010 appellant's counsel advised OWCP that his client could not find a local physician to prepare an impairment rating in accordance with the A.M.A., *Guides* (6th ed. 2008).

In January 2011 OWCP forwarded appellant a copy of the DMA's September 30, 2010 findings. It also reiterated the need for her to provide an impairment rating in accordance with the A.M.A., *Guides* (6th ed. 2008). OWCP encouraged appellant to submit the DMA's report to her treating physician and have him/her prepare the necessary impairment rating within 30 days.

In a letter dated February 18, 2011, counsel advised OWCP that appellant's physician was unfamiliar with the A.M.A., *Guides* (6th ed. 2008), and thus, was unable to prepare the requested impairment rating. He specifically requested OWCP's assistance in scheduling an examination.³

² In a March 30, 2009 report, appellant's dermatologist, Dr. Michael J. Donahue, explained that psoriasis affects 2.2 percent of the population worldwide and probably was genetically driven. He unequivocally stated that this condition was not caused by appellant's employment exposure. Dr. Donahue also noted that psoriasis was incurable. While acknowledging that exposure to any kind of irritant could potentially aggravate appellant's psoriasis, Dr. Donahue understood that she wore protective gloves at work.

³ Counsel's assistant made a similar request *via* telephone on February 18, 2011.

By decision dated March 3, 2011, OWCP denied appellant's claim for a schedule award based upon the DMA's September 30, 2010 report.

Appellant's counsel requested a hearing, which OWCP held on November 16, 2011. OWCP received additional medical records regarding appellant's ongoing treatment for bilateral hand dermatitis from Dr. Andrew A. Hendricks, a Board-certified dermatologist, on November 4, 2011.

In a December 30, 2011 decision, the hearing representative affirmed OWCP's March 3, 2011 decision. The hearing representative noted that nothing had been submitted that contradicted the DMA's September 30, 2010 findings.

Appellant's counsel requested reconsideration on June 4, 2012. OWCP received a February 22, 2012 electrodiagnostic study and a diagnosis of carpal tunnel syndrome from Dr. Indra S. Gatiwala, a Board-certified neurologist.

OWCP denied modification by decision dated December 4, 2012. The senior claims examiner noted that carpal tunnel syndrome was not an accepted condition. She further noted that Dr. Hendricks' November 4, 2011 diagnosis of hand dermatitis was of no evidentiary value.

LEGAL PRECEDENT

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.⁴ FECA, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.⁵ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2008).⁶

No schedule award is payable for a member, function or organ of the body that is not specified in FECA or in the implementing regulations.⁷ The list of scheduled members includes the eye, arm, hand, fingers, leg, foot and toes.⁸ Additionally, FECA specifically provides for compensation for loss of hearing and loss of vision.⁹ By authority granted under FECA, the

⁴ 5 U.S.C. § 8107(c)(1).

⁵ 20 C.F.R. § 10.404 (2012).

⁶ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (February 2013).

⁷ *W.C.*, 59 ECAB 372, 374-75 (2008); *Anna V. Burke*, 57 ECAB 521, 523-24 (2006).

⁸ 5 U.S.C. § 8107(c).

⁹ *Id.*

Secretary of Labor expanded the list of scheduled members to include the breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix and vulva/vagina and skin.¹⁰ A schedule award for the skin (205 weeks) may be paid for injuries occurring on or after September 11, 2001.¹¹

Impairment ratings for schedule awards include those conditions accepted by OWCP as employment related, and any preexisting permanent impairment of the same member or function.¹² If the employment-related injury has affected any residual usefulness in whole or in part, a schedule award may be appropriate.¹³ There are no provisions for apportionment under FECA.¹⁴

ANALYSIS

Although OWCP relied on Dr. Patel's July 7, 2009 examination findings as a basis for denying appellant's schedule award claim, his report was not initially solicited for purposes of determining entitlement to a schedule award. In April 2009, it decided to refer appellant for a second opinion examination because of a pending claim for recurrence of disability (Form CA-2a). OWCP sought additional medical information on whether appellant's accepted condition had resolved. It also inquired as to whether appellant's diagnosed psoriasis was causally related to her federal employment.¹⁵ OWCP did not specifically request an impairment rating from Dr. Patel at the time.

When appellant filed for a schedule award in June 2010, OWCP referred Dr. Patel's July 7, 2009 report to its DMA for an opinion on whether appellant had permanent impairment of the right and left hands. In his September 30, 2010 report, the DMA concluded that appellant had zero percent impairment of both the left and right hand. However, he did not specifically reference the A.M.A., *Guides* (6th ed. 2008). Although the DMA referenced certain findings from Dr. Patel's July 7, 2009 examination, he did not otherwise explain how these findings supported his ultimate conclusion that appellant had zero percent impairment of both hands. Thus, it is unclear how the DMA rated appellant's bilateral hand impairment under the A.M.A., *Guides* (6th ed. 2008).

Since OWCP's medical development in 2010 regarding bilateral hand impairment, the Secretary has expanded the list of scheduled members to include the skin, which provides for a maximum of 205 weeks' compensation.¹⁶ Chapter 8 of the A.M.A., *Guides* (6th ed. 2008) provides criteria for rating permanent impairment due to skin disorders, including contact

¹⁰ 5 U.S.C. § 8107(c)(22); 20 C.F.R. § 10.404(b).

¹¹ 20 C.F.R. § 10.404(b) (2011); Federal (FECA) Procedure Manual, Part 2, *supra* note 7 at 2.808.5(c)(A).

¹² Federal (FECA) Procedure Manual, *id.* at Chapter 2.808.5d.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ With respect to this latter issue, Dr. Patel's July 7, 2009 assessment is far from unequivocal.

¹⁶ 20 C.F.R. § 10.404(b).

dermatitis.¹⁷ The procedure manual also provides specific guidance on rating impairments of the skin.¹⁸

In March 2011 when OWCP first denied appellant's claim for a schedule award, the skin was not yet a scheduled member. However, since August 2011 when the Secretary added skin to the list of scheduled members, OWCP has twice reviewed the merits of appellant's schedule award claim. In both instances, it failed to consider whether the evidence of record supported a schedule award for impairment due to skin disorders in accordance with Chapter 8, The Skin, A.M.A., *Guides* 159-82 (6th ed. 2008). The latest merit decision dated December 4, 2012 characterized Dr. Hendrick's November 4, 2011 diagnosis of ongoing "hand dermatitis" as lacking evidentiary value.

As previously noted, the DMA's September 30, 2010 report did not fully explain the basis for appellant's zero percent hand rating under the A.M.A., *Guides* (6th ed. 2008). Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden to establish entitlement to compensation; however, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁹ Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.²⁰ As the DMA's September 30, 2010 analysis is incomplete, the case will be remanded to OWCP for further development. After OWCP has developed the case record to the extent it deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The case is not in posture for decision regarding the issue of whether appellant has a ratable impairment of the skin in accordance with Chapter 8 of the A.M.A., *Guides* (6th ed. 2008).

¹⁷ See A.M.A., *Guides* 163 (6th ed. 2008) Section 8.4.

¹⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.5c(4).

¹⁹ *William J. Cantrell*, 34 ECAB 1223 (1983).

²⁰ *Richard F. Williams*, 55 ECAB 343, 346 (2004).

ORDER

IT IS HEREBY ORDERED THAT the December 4, 2012 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this decision.

Issued: May 1, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board